

SUPREME COURT OF THE UNITED STATES

ROBERT J. COLPRIT, JR. :

VS :

NO 79-247

WESTERLY SCHOOL COMMITTEE :

BRIEF OF THE

WESTERLY SCHOOL COMMITTEE

John J. Turano  
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Westerly School  
Committee  
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September 24, 1979

## JURISDICTIONAL STATEMENT

The petitioner has applied for the discretionary Writ of Certiorari to review a decision of the Supreme Court of Rhode Island entered on May 17, 1979 denying a petition for a writ of certiorari - RI - 401 A2 1308 (1979). Petitioner is attempting to invoke the jurisdiction of this Court pursuant to Title 28 USC §1257(3) 1976)

"§1257. State Courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: ...

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the constitution, treaties or

statutes of, or Commission held or authority exercised under, the United States."

The petitioner's argument contends that the decision of a Rhode Island Supreme Court is a final judgment or decree in this case.

Rule 13(c) of the Rhode Island Rules of Appellate Procedure provide as follows:

"(c) Order Granting or Denying Petition. Upon the granting or denying of a petition an appropriate order will be entered and the clerk shall give notice thereof to all parties. If the petition is granted, appropriate process shall issue and the cause shall thereafter proceed in accordance with these Rules; and it shall be incumbent upon the petitioner to comply with the requirements of these Rules for the preparation and transmission of the record on appeal. If the writ in question calls for review or other tribunal, allegations of fact contained in the petition which are not contained in the record under review shall not be considered to be established. A denial of a petition,

without more, is not an adjudication on the merits and such action is to be taken as without prejudice to a further application to this court or any court for the relief sought."  
(underlining added)

The Rhode Island Supreme Court in its order dated May 17, 1979 denied the petitioners' petition for a writ of certiorari. This denial is without prejudice and is not a final adjudication on the merits. The order reads as follows:

"The petition for a writ of certiorari is denied."

The petitioner in this cause is free to petition our Supreme Court for a writ of certiorari and have a final adjudication on the merits.

The writ of certiorari is an extraordinary writ. Its issuance is directed to the sound discretion of the court. The petitioner in this cause applied to the Supreme Court of Rhode Island for

such a writ and it was denied without an adjudication on the merits. Our Supreme Court exercised its judicial discretion and declined to issue its writ of certiorari. The question then is, may the U. S. Supreme Court review a State Supreme Court's denial of a petition for an extraordinary writ of certiorari. It would seem that the answer is no, especially when the denial of the writ is not a final adjudication and is not without prejudice to the petitioner to file a new petition in the same cause. The issuance of a writ of certiorari is not a matter of right and lies within the sound discretion of the court. Its issuance or the Court's refusal to issue a writ of certiorari is not reviewable by definition.

QUESTION PRESENTED FOR REVIEW

"Whether the refusal on the part of the Westerly School Committee to hear the appeal of the petitioner, in contravention of the School Committee's own procedures governing disciplinary exclusions, violated petitioner's Fourteenth Amendment right to 'Due Process of Law'".

The petitioner has changed the issue before this Honorable Court. The issue presented to the Rhode Island Supreme Court was stated "Does an aggrieved petitioner have the right to appeal the decision of a High School Principal to the School Committee".

The issues raised in each court are different. In the petitioner's petition for a writ of certiorari sought to establish a right of appeal from a decision of a high school principal to the School Committee. Our Supreme Court denied that petition without prejudice. Now

the same petitioner desires to review that decision based on another question of law not raised below. That new question must be first presented to the Supreme Court of Rhode Island so that it may make a final judgment based upon its interpretation of the Rhode Island General Laws and the policy of the respondent School Committee and the Constitution of the United States before raising a substantially new issue before this Honorable Court.

The issue raised by the petitioner has now been raised for the first time before any of the prior administrative bodies. The original request to the respondent was for an appeal hearing. The petitioner desired an appeal hearing before the School Committee. The issue presented before the Commissioner of Education was whether or not the



petitioner was entitled to an appeal hearing before the School Committee. In his brief before the Board of Regents the petitioner raised the issue of an appeal. Now, before this Honorable Court, the petitioner changes his complaint and desires a review of a decision upon an issue which was never before raised or decided.

The legal principal that issues not raised before the lower tribunal cannot be raised on appeal or review by a writ of certiorari is well established in our judicial system. Only decisions made on issues raised in the lower court are subject to review.

Goss v Lopez, 418 US 565 (1975) requires a hearing by the disciplinarian prior to a suspension from school for a period of ten (10) days or less. The Court in Goss v Lopez does not require

an appellate procedure and it is well settled law that there is no common law right to an appeal, nor any constitutional right to an appeal. An appeal, if required, is a statutory right. See McKane v Durston, 153 US 684 at page 687 (1894).

"An appeal from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provision allowing such appeal. A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is convicted, was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the State, to allow or not to allow such a review."

The decision in McKane was followed in Andrews v Swartz, 156 US 272 at 275 (1895) and District of Columbia v Clawans, 300 US 617 at 627 (1937). In the recent case of Griffin v Illinois,

351 US 12 at 18 (1956), this Court said

"It is true that a state is not required by the Federal Constitution to provide appellate court or a right to appellate review at all..."

The extraordinary writ of certiorari is directed to the sound judicial discretion of this Honorable Court, and is granted where there are special and important reasons. Rule 19 of the Rules of the Supreme Court of the United States indicate the character of the reasons which will be considered and they are

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."...

The petitioner therefore has the burden of persuading the Court that the Supreme Court of Rhode Island did not make a proper decision relating to a

federal question. In fact, the State Supreme Court has denied the petitioner's petition for a writ of certiorari without prejudice and has not made a decision on the merits, or the issue presently raised.

Secondly, the petitioner has a burden to establish that he does not have an adequate remedy at law. The petitioner has not even alleged that he does not have such a remedy! Further, the petitioner has failed to show that he does not have an adequate remedy at law. If the petitioner has been illegally suspended from school, his remedy is an action at law for deprivation of his civil rights as statutory remedy.

The respondent school committee under the authority of Title 16, Chapter 2, Section 16 of the Rhode Island General Laws as amended

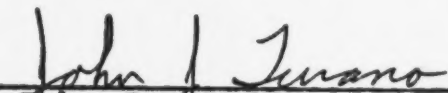
"16-2-16. Suspension of pupils.

The school committee may suspend during pleasure all pupils found guilty of incorrigibly bad conduct or of violation of the school regulations."

has adopted a disciplinary exclusion policy. such policy is within the standards enunciated by the United States Supreme Court in Goss v Lopez, 419 US 565.

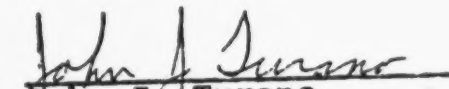
Therefore, the respondent respectfully requests that this Honorable Court deny the petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

  
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Westerly, Rhode Island  
02891

CERTIFICATION

I, John J. Turano, hereby certify that on the 24th day of September, 1979 I sent a copy of the within Brief to Thomas J. Capalbo, Jr. at 90 High Street, Westerly, Rhode Island by United States mail, postage prepaid.

  
John J. Turano